

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 122

HOUSE BILL 2081

AN ACT

AMENDING TITLE 44, CHAPTER 11, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 21; RELATING TO SOLICITATIONS USING LOAN INFORMATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 44, chapter 11, Arizona Revised Statutes, is amended
3 by adding article 21, to read:

4 ARTICLE 21. SOLICITATIONS USING LOAN INFORMATION

5 44-1799.51. Loan information; solicitations; restrictions;
6 injunction; definition

7 A. A PERSON SHALL NOT REFERENCE THE TRADE NAME OR TRADEMARK OF A
8 LENDER OR A TRADE NAME OR TRADEMARK CONFUSINGLY SIMILAR TO THAT OF A LENDER
9 IN A SOLICITATION FOR THE OFFERING OF SERVICES OR PRODUCTS WITHOUT THE
10 CONSENT OF THE LENDER UNLESS THE SOLICITATION CLEARLY AND CONSPICUOUSLY
11 STATES ALL OF THE FOLLOWING IN CLOSE PROXIMITY TO AND IN THE SAME OR LARGER
12 POINT TYPE AS THE FIRST AND THE MOST PROMINENT USE OF A LENDER'S TRADE NAME
13 OR TRADEMARK IN THE SOLICITATION:

14 1. THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE PERSON MAKING THE
15 SOLICITATION.

16 2. THAT THE PERSON MAKING THE SOLICITATION IS NOT AFFILIATED WITH THE
17 LENDER.

18 3. THAT THE SOLICITATION IS NOT AUTHORIZED OR SPONSORED BY THE LENDER.

19 4. THAT THE LOAN INFORMATION REFERENCED WAS NOT PROVIDED BY THE
20 LENDER.

21 B. A PERSON SHALL NOT REFERENCE A LOAN NUMBER, LOAN AMOUNT OR OTHER
22 SPECIFIC LOAN INFORMATION THAT IS NOT PUBLICLY AVAILABLE IN A SOLICITATION
23 FOR THE PURCHASE OF SERVICES OR PRODUCTS, EXCEPT THAT THIS PROHIBITION DOES
24 NOT APPLY TO COMMUNICATIONS BY A LENDER OR ITS AFFILIATES WITH A CURRENT
25 CUSTOMER OF THE LENDER OR WITH A PERSON WHO WAS A CUSTOMER OF THE LENDER
26 DURING THE EIGHTEEN MONTHS IMMEDIATELY PRECEDING THE SOLICITATION.

27 C. A PERSON SHALL NOT REFERENCE A LOAN NUMBER, LOAN AMOUNT OR OTHER
28 SPECIFIC LOAN INFORMATION THAT IS PUBLICLY AVAILABLE IN A SOLICITATION FOR
29 THE PURCHASE OF SERVICES OR PRODUCTS UNLESS THE COMMUNICATION CLEARLY AND
30 CONSPICUOUSLY STATES ALL OF THE FOLLOWING IN CLOSE PROXIMITY TO AND IN THE
31 SAME OR LARGER POINT TYPE AS THE FIRST AND THE MOST PROMINENT USE OF A LOAN
32 NUMBER, LOAN AMOUNT OR OTHER SPECIFIC LOAN INFORMATION THAT IS PUBLICLY
33 AVAILABLE IN THE SOLICITATION:

34 1. THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE PERSON MAKING THE
35 SOLICITATION.

36 2. THAT THE PERSON MAKING THE SOLICITATION IS NOT AFFILIATED WITH THE
37 LENDER.

38 3. THAT THE SOLICITATION IS NOT AUTHORIZED OR SPONSORED BY THE LENDER.

39 4. THAT THE LOAN INFORMATION REFERENCED WAS NOT PROVIDED BY THE
40 LENDER.

41 D. SUBSECTION C DOES NOT APPLY TO COMMUNICATIONS BY A LENDER OR ITS
42 AFFILIATES WITH A CURRENT CUSTOMER OF THE LENDER OR WITH A PERSON WHO WAS A
43 CUSTOMER OF THE LENDER DURING THE EIGHTEEN MONTHS IMMEDIATELY PRECEDING THE
44 SOLICITATION.

1 E. A PERSON SHALL NOT USE THE NAME OF A LENDER OR A NAME SIMILAR TO
2 THAT OF A LENDER IN A SOLICITATION DIRECTED TO CONSUMERS IF THAT USE COULD
3 CAUSE A REASONABLE PERSON TO BE CONFUSED, MISTAKEN OR DECEIVED AS TO EITHER
4 OF THE FOLLOWING:

5 1. THE LENDER'S SPONSORSHIP, AFFILIATION, CONNECTION OR ASSOCIATION
6 WITH THE PERSON USING THE NAME.

7 2. THE LENDER'S APPROVAL OR ENDORSEMENT OF THE PERSON USING THE NAME
8 OR THE PERSON'S SERVICES OR PRODUCTS.

9 F. ANY REFERENCE TO AN EXISTING LENDER, A LOAN NUMBER, LOAN AMOUNT OR
10 OTHER SPECIFIC LOAN INFORMATION THAT APPEARS ON THE OUTSIDE OF AN ENVELOPE,
11 THAT IS VISIBLE THROUGH THE ENVELOPE WINDOW, OR THAT APPEARS ON A POSTCARD IN
12 CONNECTION WITH ANY WRITTEN COMMUNICATION THAT INCLUDES OR CONTAINS A
13 SOLICITATION FOR GOODS OR SERVICES IS PROHIBITED WITHOUT THE CONSENT OF THE
14 EXISTING LENDER.

15 G. IT IS NOT A VIOLATION OF THIS SECTION FOR A PERSON TO USE THE TRADE
16 NAME OF ANOTHER LENDER IN AN ADVERTISEMENT FOR SERVICES OR PRODUCTS TO
17 COMPARE THE SERVICES OR PRODUCTS OFFERED BY THE OTHER LENDER.

18 H. A LENDER OR OWNER OF A TRADE NAME OR TRADEMARK MAY SEEK AN
19 INJUNCTION AGAINST A PERSON WHO VIOLATES THIS SECTION TO STOP THE UNLAWFUL
20 USE OF THE TRADE NAME, TRADEMARK OR LOAN INFORMATION. THE PERSON SEEKING THE
21 INJUNCTION SHALL NOT HAVE TO PROVE ACTUAL DAMAGE AS A RESULT OF THE
22 VIOLATION. IRREPARABLE HARM AND INTERIM HARM TO THE LENDER OR OWNER SHALL BE
23 PRESUMED. THE LENDER OR OWNER SEEKING THE INJUNCTION MAY SEEK TO RECOVER
24 ACTUAL DAMAGES AND ANY PROFITS THE DEFENDANT HAS ACCRUED AS A RESULT OF THE
25 VIOLATION. THE PREVAILING PARTY IN ANY ACTION BROUGHT PURSUANT TO THIS
26 SECTION IS ENTITLED TO RECOVER COSTS ASSOCIATED WITH THE ACTION AND
27 REASONABLE ATTORNEY FEES FROM THE OTHER PARTY.

28 I. FOR THE PURPOSES OF THIS SECTION, "LENDER" MEANS A BANK, NATIONAL
29 BANK DOING BUSINESS IN THIS STATE, INDUSTRIAL BANK, SAVINGS AND LOAN
30 ASSOCIATION, SAVINGS BANK, CREDIT UNION, FINANCE COMPANY, MORTGAGE BANK,
31 MORTGAGE BROKER, LOAN ORIGINATOR OR HOLDER OF THE LOAN OR OTHER PERSON WHO
32 MAKES LOANS IN THIS STATE AND ANY AFFILIATE, OR ANY THIRD PARTY OPERATING
33 WITH THE CONSENT OF THE LENDER.

APPROVED BY THE GOVERNOR APRIL 17, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2006.